

Impartial Analyses for Proposed Constitutional Amendments Appearing on the November 2008 Ballot

Constitutional Amendment A

Constitutional Amendment A amends provisions of the Utah Constitution relating to the filling of a vacancy in the offices of Governor and Lieutenant Governor, the process for determining the disability of the Governor and Lieutenant Governor, and the exercise of the powers of Governor when the Governor is temporarily disabled.

The following table compares the changes made by Constitutional Amendment A to the current provisions of the Utah Constitution.

Topic	Current Utah Constitution	Changes made by Constitutional Amendment A
What constitutes a vacancy in the office of Governor	Does not define what constitutes a vacancy but provides for how the powers of the office of Governor are transferred in the case of the Governor's death, impeachment, removal from office, resignation, or disability, or if the Governor-elect fails to take office	States that a vacancy occurs when: <ul style="list-style-type: none"> the Governor dies, resigns, is removed by impeachment, ceases to reside in the state, or becomes permanently disabled; or the Governor-elect fails to take office
What happens when there is a vacancy in the office of Governor	The powers and duties of Governor temporarily fall to the Lieutenant Governor	The Lieutenant Governor becomes Governor
What happens when there is a vacancy in the offices of Governor and Lieutenant Governor at the same time	Senate President temporarily acts as Governor	Senate President becomes Governor
What happens when there is a vacancy in the offices of Governor, Lieutenant Governor, and Senate President at the same time	Speaker of the House of Representatives temporarily acts as Governor	Speaker of the House of Representatives becomes Governor

Term of the person who takes the place of the Governor	<p>The person exercises the powers and duties of or acts as Governor until;</p> <ul style="list-style-type: none"> the next general election; or in the case of the Governor's disability, the disability ceases 	<p>The person becomes Governor and serves until:</p> <ul style="list-style-type: none"> the first Monday in January following the next regular general election, if the vacancy occurs during the first year of the Governor's term; or for the remainder of the unexpired term, if the vacancy occurs after the first year
Determining the disability of the Governor	Provides a process for determining the disability of the Governor or person temporarily acting as Governor	<p>Modifies and clarifies the process for determining the disability of the Governor or person temporarily acting as Governor</p> <p>Makes the process for determining disability apply also to determining the disability of a Governor-elect</p>
What happens when the Governor is temporarily disabled	<p>The powers and duties of the Governor fall to the Lieutenant Governor until the Governor's disability ceases</p> <p>It is unclear what would happen if the Lieutenant Governor becomes temporarily disabled while discharging the powers and duties of Governor during the Governor's temporary disability. One reading of the current Utah Constitution is that the Senate President would act as Governor and that, if the Senate President then becomes temporarily disabled, the Speaker of the House of Representatives would act as Governor.</p>	<ul style="list-style-type: none"> The powers and duties of the Governor shall temporarily be discharged by the Lieutenant Governor If the Lieutenant Governor leaves office or becomes disabled, the Governor's powers and duties shall temporarily be discharged by the Senate President; If both the Lieutenant Governor and Senate President leave office or become disabled, the Governor's powers and duties shall temporarily be discharged by the Speaker of the House of Representatives
What constitutes a vacancy in the office of Lieutenant Governor	Does not define what constitutes a vacancy but provides for the appointment of a new Lieutenant Governor if the office is vacated by death, resignation, or otherwise	<p>States that a vacancy occurs when:</p> <ul style="list-style-type: none"> the Lieutenant Governor dies, resigns, is removed by impeachment, becomes Governor, ceases to reside in the state, or becomes permanently disabled; or the Lieutenant Governor-elect fails to take office
What happens when there is a vacancy in the office of Lieutenant Governor	The Governor appoints a person to fill the vacancy	The Governor's appointment requires the consent of the Senate

Term for which a person appointed to fill a vacancy serves as Lieutenant Governor	Until a successor is elected and qualified	Until the first Monday in January after the following regular general election, if the vacancy occurs because the Lieutenant Governor becomes Governor; otherwise, for the remainder of the unexpired term
Determining the disability of the Lieutenant Governor	No process for determining the disability of a Lieutenant Governor	Establishes a process for determining the disability of the Lieutenant Governor

Effective date

If approved by voters, Constitutional Amendment A takes effect January 1, 2009.

Fiscal impact

Enactment of this Amendment will not likely result in any increase or decrease in revenue to state or local government, but may result in a slight increase in costs to state and local governments if a mid-term election of both Governor and Lieutenant Governor is required.

Constitutional Amendment B

Constitutional Amendment B amends a provision of the Utah Constitution relating to a permanent state trust fund. The Amendment expands the sources of money that can be placed in the trust fund to include money or other assets given to the trust fund under any provision of law.

Background and current provisions of the Utah Constitution

In 2001, the Utah Constitution was amended to establish a permanent state trust fund. Money may be removed from the trust fund only if the Governor and three-fourths of the Legislature agree. Interest and other income earned from the money in the trust fund are deposited into the state's General Fund.

Under the current Utah Constitution, the trust fund may receive money from two sources: (1) money the state receives relating to the November 1998 settlement agreement with leading tobacco manufacturers; and (2) other funds and assets that the trust fund receives either by bequest through a will or by private donation. The Utah Constitution does not currently state that the trust fund may include money from any other source. It is, therefore, subject to dispute whether the Utah Constitution would allow the Legislature to appropriate money to the trust fund or to provide by law for some other source of money for the trust fund.

The effect of Constitutional Amendment B

Constitutional Amendment B expands the sources from which the permanent state trust fund may receive money or other assets. The Amendment states that the trust fund may also consist of money or other assets given to the fund under any provision of law. This Amendment allows the Legislature to appropriate money to the trust fund or to provide by law for other sources of money to be deposited into the trust fund.

Effective date

If approved by voters, Constitutional Amendment B takes effect January 1, 2009.

Fiscal impact

Enactment of this Amendment alone will not likely result in any increase or decrease in revenue or cost to state or local government. However, if money or other assets are given to the trust fund as a result of this Amendment that would not otherwise have been given, the trust fund is likely to grow faster than it would have otherwise. If this happens, there may be an increase in resources available to programs supported by the trust fund.

Constitutional Amendment C

Constitutional Amendment C makes two changes relating to annual general sessions of the Legislature. First, the Amendment moves the required beginning date of annual general sessions from the third Monday in January to the fourth Monday in January. Second, the Amendment excludes federal holidays from the calculation of the 45-day limit on the length of annual general sessions.

Current provisions of the Utah Constitution

Under the current Utah Constitution, annual general sessions of the Legislature are required to begin on the third Monday in January. That first day of the annual general session currently falls on the same day as the federal holiday to commemorate the birth of Martin Luther King, Jr.

The Utah Constitution also currently prohibits annual general sessions of the Legislature from exceeding 45 calendar days in length. The only exception to that limit under the current Utah Constitution applies when the Legislature is considering an impeachment. There is no provision excluding federal holidays from the 45-day limit.

Effect of Constitutional Amendment C

Constitutional Amendment C moves the beginning date of annual general sessions of the Legislature from the third Monday in January to the fourth Monday in January. Under this Amendment, each annual general session of the Legislature will begin a week after the federal holiday commemorating the birth of Martin Luther King, Jr.

This Amendment also excludes federal holidays from the calculation of the 45-day limit on annual general sessions of the Legislature. Presidents' Day is the only federal holiday that would currently fall within a 45-day annual general session beginning the fourth Monday in January. Under Constitutional Amendment C, Presidents' Day would not be considered when calculating the 45-day limit.

The effect of Constitutional Amendment C is that annual general sessions of the Legislature would begin one week later than under the current Utah Constitution. In addition, annual general sessions would end one week and a day later than under the current Utah Constitution.

Effective date

If approved by voters, Constitutional Amendment C takes effect January 1, 2009.

Fiscal impact

Enactment of this Amendment will not likely result in any increase or decrease in revenue or cost to state or local government.

Constitutional Amendment D

Constitutional Amendment D modifies a provision requiring the Legislature to divide the state into congressional, legislative, and other districts. The Amendment changes the time frame in which the Legislature is required to make those divisions to be no later than the annual general session following the Legislature's receipt of the federal census results.

Current provisions of the Utah Constitution

Under the current Utah Constitution, the Legislature is required to divide the state into congressional, legislative, and other districts at the session next following the federal census. The time frame established by that provision raises two potential issues.

First, the next session after the federal census could potentially be a special session called by the Governor for something unrelated to dividing the state into districts. Even if the Legislature later divided the state into districts at or before the next annual general session of the Legislature, the dividing into districts at that time could be seen as a violation of the Utah

Constitution because the dividing did not happen at the earlier special session, which arguably is the "session next following" the federal census.

Second, the time frame established by the current Utah Constitution for the Legislature to divide the state into districts is arguably based on when the federal census takes place, not the Legislature's receipt of the census results. The results of the federal census do not become available until the year after the actual census is conducted. By the time the results of a census are made available, the Legislature has held its next annual general session. The Legislature is currently unable to divide the state into districts at that annual general session, even though it falls after the federal census is conducted, because the results of the federal census are not yet available. The Legislature's failure to divide the state at that annual general session could be seen as a violation of the Utah Constitution's requirement to divide the state at the "session next following" the federal census, even though the Legislature could not accomplish the division because the census results were not yet available.

Effect of Constitutional Amendment D

Constitutional Amendment D changes the language describing the time frame that applies to the Utah Constitution's requirement for the Legislature to divide the state into districts. The Amendment requires the Legislature to divide the state into districts no later than the annual general session next following the Legislature's receipt of the federal census. Under this Amendment, whether one or more special sessions are held before the Legislature divides the state into districts does not matter as long as the Legislature divides the state into districts no later than the following annual general session. Likewise, Constitutional Amendment D clarifies that the deadline for the Legislature to divide the state into districts is the annual general session after the Legislature's receipt of the federal census results.

Effective date

If approved by voters, Constitutional Amendment D takes effect January 1, 2009.

Fiscal impact

Enactment of this Amendment will not likely result in any increase or decrease in revenue or cost to state or local government.

Constitutional Amendment E

Constitutional Amendment E provides an exception to a general rule in the Utah Constitution prohibiting state and local governments from subscribing to the stock or bonds of a private company. The Amendment authorizes the State to subscribe to stock or bonds of a private company with money from the permanent State School Fund or with money from certain land granted to the state by the federal government.

Background and current provisions of the Utah Constitution

The original 1896 Utah Constitution contained a provision that prohibited state and local governments from subscribing to stock or bonds in aid of any private company. Subscribing to stock or bonds means to buy or to agree to buy stock or bonds of a company that is newly issuing stock or bonds. Buying stock of a private company is buying an ownership interest in the company. Buying the bonds of a private company is essentially lending the company money. The loan is evidenced by bond documents which set forth the interest that the company is obligated to pay on the borrowed amount and the date the company is required to repay the borrowed amount. The purposes of the provision prohibiting government from subscribing to stock or bonds generally include preventing government from using public resources to benefit a single private company and preventing government from risking its resources on a startup company.

The current Utah Constitution continues to prohibit state and local governments generally from subscribing to stock or bonds in aid of any private company. In 2005, however, the Utah Constitution was amended to provide an exception to the general prohibition. The 2005 amendment authorized the state or a public institution of higher education to acquire an ownership interest in a private business in exchange for rights to intellectual property developed by the state or a public institution of higher education.

Effect of Constitutional Amendment E

Constitutional Amendment E makes another exception to the general prohibition against state or local government subscribing to stock or bonds of a private company. The Amendment authorizes the state to subscribe to stock or bonds of a private company if the investment is made with money from either or both of two sources: (1) the State School Fund; and (2) lands granted to the state from the federal government.

The State School Fund is a permanent trust fund established by the Utah Constitution. The State School Fund receives money from the sale of certain school and federal lands, revenues from nonrenewable resources on state lands, revenues from the use of school trust lands, revenues appropriated by the Legislature, and other sources. The Utah Constitution requires the money in the fund to be safely invested and held by the state in perpetuity. Interest and dividends received from investing trust fund money are spent for the support of the public education system. Constitutional Amendment E allows the state to use money held in the State School Fund to subscribe to stock or bonds of private companies.

The other money that Constitutional Amendment E allows the state to use to subscribe to stock or bonds is money derived from certain land that the federal government gave the state in connection with the state achieving statehood. This land includes land to benefit higher education, land for the establishment of reservoirs for irrigation, land for the establishment of a school of mines and other schools, and land for the establishment of other state institutions.

Effective date

If approved by voters, Constitutional Amendment E takes effect January 1, 2009.

Fiscal impact

Enactment of this Amendment alone will not likely result in any increase or decrease in revenue or cost to state or local government. However, if the state subscribes to stock or bonds using money held in the State School Fund or money derived from federal land grants, as this Amendment authorizes, the amount of earnings from those monies may be affected. Whether the amount of earnings will increase or decrease and the amount of any increase or decrease will depend on: (1) the amount of money the state invests in subscribing to stock or bonds; and (2) the rate of return derived from subscribing to stock or bonds as compared to the rate of return derived from investments the state would otherwise have made with that money. An increase or decrease of 0.1% in the rate of return on the investment of State School Fund and federal land grants money, currently totaling approximately one billion dollars, would result in about a one-million dollar annual increase or decrease in the amount of money available for the support of public and higher education.